

No. 18-6059

IN THE

SUPREME COURT OF THE UNITED STATES

CEDRIC CARTER

Petitioner

vs.

STATE OF OHIO

Respondent

**BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI TO THE OHIO SUPREME COURT**

**OFFICE OF THE OHIO PUBLIC
DEFENDER**

RICHARD A. CLINE

Sr. Assistant Public Defender, 0001854

Counsel of Record

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 644-1538 – Direct Dial
(614) 466-5394 – General Number

COUNSEL FOR PETITIONER, CEDRIC
CARTER

JOSEPH T. DETERS

Hamilton County Prosecuting Attorney, 0012084P

RONALD W. SPRINGMAN, JR.

Chief Assistant Prosecuting Attorney, 0041413P

Counsel of Record

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3052
Fax No. (513) 946-3021
ron.springman@hcpros.org

COUNSEL FOR RESPONDENT, STATE OF
OHIO

QUESTIONS PRESENTED

I

WAS *HURST V. FLORIDA*, 577 U.S. ___, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016), VIOLATED WHERE A JURY UNANIMOUSLY FOUND CARTER COMMITTED MURDER WITH PRIOR CALCULATION AND DESIGN AND IN THE COURSE OF COMMITTING OR ATTEMPTING TO COMMIT THE FELONY OF AGGRAVATED ROBBERY – A FINDING THAT RENDERED CARTER DEATH-ELIGIBLE UNDER OHIO LAW?

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

There are no parties to the proceeding other than those listed in the caption. Under Rule 29.6, Respondent states that no parties are corporations.

TABLE OF CONTENTS

	<u>Page</u>
<u>QUESTIONS PRESENTED</u>	i.
<u>PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT</u>	ii.
<u>TABLE OF CONTENTS</u>	iii.
<u>TABLE OF AUTHORITIES</u>	iv.
<u>OPINIONS BELOW</u>	1.
<u>JURISDICTIONAL STATEMENT</u>	1.
<u>CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED</u>	2.
<u>STATEMENT OF THE CASE AND FACTS</u>	3.
<u>REASON FOR DENYING THE WRIT</u>	4.

I

OHIO'S DEATH PENALTY STATUTORY SCHEME DOES NOT VIOLATE *HURST V. FLORIDA*, 577 U.S. ___, 136 S.CT. 616, 193 L.ED.2d 504 (2016), BECAUSE THE JURY MAKES THE FACTUAL FINDINGS MAKING A DEFENDANT DEATH-ELIGIBLE – NOT A COURT. THE JURY HERE FOUND CARTER COMMITTED THE MURDER WITH PRIOR CALCULATION AND DESIGN AND IN THE COURSE OF COMMITTING OR ATTEMPTING TO COMMIT THE FELONY OF AGGRAVATED ROBBERY – THE ELEMENTS RENDERING CARTER DEATH-ELIGIBLE.

II

THIS COURT ON OCTOBER 1, 2018 DENIED CERTIORARI ON THIS VERY ISSUE. *MOORE V. OHIO*, -- S.CT. --, 2018 WL 3037065.

<u>CONCLUSION</u>	5.
-------------------------	----

TABLE OF AUTHORITIES

PAGE

CASES CITED:

<i>Apprendi v. New Jersey</i> , 530 U.S. 466, 120 S.Ct. 2348	4
<i>Hurst v. Florida</i> , ___ U.S. ___, 136 S.Ct. 616 (2016)	3-5
<i>Moore v. Ohio</i> , -- S.Ct. --, 2018- WL 3037065	4
<i>Ring v. Arizona</i> , 536 U.S. 584, 122 S.Ct. 2428 (2002)	4
<i>State v. Belton</i> , 2016-Ohio-1581	4
<i>State v. Carter</i> , 2018-Ohio-2358	1
<i>State v. Carter</i> , 1st Dist. No. C-920604, 1993 WL 512859	3
<i>State v. Carter</i> , 72 Ohio St. 3d 545, 1995-Ohio-104, 651 N.E.2d 965	3
<i>State v. Carter</i> , 1st Dist. No. C-170231, 2018-Ohio-645, 95 N.E.3d 443.....	3
<i>State v. Fears</i> , 1st Dist. Hamilton C.P. No. B9702360B, 2016-Ohio-7681	4
<i>State v. Gapen</i> , 2nd Dist. Greene C.P. No. 2000CR02945, 2016-Ohio-7681	4
<i>State v. Mason</i> , Marion Co. App. No. 9-16-34, 2016-Ohio-8400	4
<i>State v. Mason</i> , 2018-Ohio-1462, -- N.E.3d --	5
<i>State v. Myers</i> , 2nd Dist. Greene No. 96CA38, 2016-Ohio-7681	4
<i>State v. Sheppard</i> , 1st Dist. Hamilton Nos. C-950402, C-950744, 2016-Ohio-7681.....	4

CASE ANNOUNCEMENTS:

11/9/16 Case Announcements #2, 2016-Ohio-7681.....	3-4
<i>State v. Carter</i> , Case Announcement 2018-Ohio-2358.....	3

CRIMINAL RULES:

Criminal Rule 33	3
------------------------	---

OHIO REVISED CODE SECTIONS CITED:

Ohio Rev. Code Ann. § 2929.03 (1993).....	2
---	---

TABLE OF AUTHORITIES (CONT'D)

PAGE

STATUTES:

28 U.S.C. §1257(a).....	1
-------------------------	---

CONSTITUTIONAL AMENDMENTS:

Sixth Amendment to the U.S. Constitution.....	2,4
Eighth Amendment to the United States Constitution.....	2
Fourteenth Amendment to the United State Constitution.....	2

No. 18-6059

IN THE
SUPREME COURT OF THE UNITED STATES

CEDRIC CARTER

Petitioner

vs.

STATE OF OHIO

Respondent

ON PETITION FOR WRIT OF
CERTIORARI TO THE OHIO SUPREME COURT

OPINIONS BELOW

At issue in this petition is the Ohio Supreme Court's denial of Carter's jurisdictional motion on June 20, 2018. *State v. Carter*, 2018-Ohio-2358.

JURISDICTIONAL STATEMENT

Petitioner Carter claims jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case implicates the Sixth Amendment to the U.S. Constitution, which provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...

This case implicates the Eighth Amendment to the United States Constitution, which provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

This case also implicates the Fourteenth Amendment to the United State Constitution, which provides in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of law.

The Ohio Statutory provision relevant to this petition is Ohio Rev. Code Ann. § 2929.03 (1993).

STATEMENT OF THE CASE AND FACTS

Carter appeals from the Ohio Supreme Court's denial of his jurisdictional motion on June 18, 2018.

In 1992, defendant Cedric Carter, was convicted of aggravated murder and aggravated robbery for the brutal slaying of Frances Messinger, a clerk working at a United Dairy Farmers store. Carter was sentenced to death. His convictions and death sentence were affirmed on appeal before the First District Court of Appeals, *State v. Carter*, 1st Dist. No. C-920604, 1993 WL 512859, and the Ohio Supreme Court. *State v. Carter*, 72 Ohio St. 3d 545, 1995-Ohio-104, 651 N.E.2d 965.

Subsequently, Carter pursued postconviction relief and an intellectual disability claim. His collective attempts to attack the validity of his convictions and capital sentence in state court failed. On January 11, 2017, Carter filed a motion to file a new mitigation trial under Criminal Rule 33 relying on *Hurst v. Florida*, ___ U.S. ___, 136 S.Ct. 616 (2016). On April 20, 2017, the trial court denied Carter's motion to file for a new mitigation hearing under Criminal Rule 33. The trial court attached to its entry a series of cases where the Ohio Supreme Court summarily ruled that *Hurst v. Florida*, supra does not apply to Ohio's death penalty scheme. 11/9/16 Case Announcements #2, 2016-Ohio-7681. The court of appeals affirmed. *State v. Carter*, 1st Dist. No. C-170231, 2018-Ohio-645, 95 N.E.3d 443. The Ohio Supreme Court declined jurisdiction. *State v. Carter*, Case Announcement 2018-Ohio-2358.

REASONS FOR DENYING THE WRIT

I

OHIO'S DEATH PENALTY STATUTORY SCHEME DOES NOT VIOLATE *HURST V. FLORIDA*, 577 U.S. ___, 136 S.Ct. 616, 193 L.ED.2d 504 (2016), BECAUSE THE JURY MAKES THE FACTUAL FINDINGS MAKING A DEFENDANT DEATH- ELIGIBLE – NOT A COURT. THE JURY HERE FOUND CARTER COMMITTED THE MURDER WITH PRIOR CALCULATION AND DESIGN AND IN THE COURSE OF COMMITTING OR ATTEMPTING TO COMMIT THE FELONY OF AGGRAVATED ROBBERY – THE ELEMENTS RENDERING CARTER DEATH-ELIGIBLE.

II

THIS COURT ON OCTOBER 1, 2018 DENIED CERTIORARI ON THIS VERY ISSUE. *MOORE V. OHIO*, -- S.Ct. --, 2018 WL 3037065.

Carter's case does not warrant this Court's jurisdiction as *Hurst* is inapplicable to Ohio's death penalty statutory scheme. This Court recently denied certiorari on this very issue on October 1, 2018. *Moore v. Ohio*, -- S.Ct. --, 2018- WL 3037065.

In *Hurst*, this Court held that Florida's death sentencing procedures violated the Sixth Amendment right to trial by jury under *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348 and *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428 (2002).

From the outset the Ohio Supreme Court has emphatically and repeatedly rejected claims that *Hurst* applies to Ohio's statutory death penalty scheme. *State v. Belton*, 2016-Ohio-1581, ¶'s 59-60; *State v. Mason*, Marion Co. App. No. 9-16-34, 2016-Ohio-8400; *State v. Sheppard*, 1st Dist. Hamilton Nos. C-950402, C-950744, 2016-Ohio-7681; *State v. Fears*, 1st Dist. Hamilton C.P. No. B9702360B, 2016-Ohio-7681; *State v. Myers*, 2nd Dist. Greene No. 96CA38, 2016-Ohio-7681; and,

State v. Gapen, 2nd Dist. Greene C.P. No. 2000CR02945, 2016-Ohio-7681 (See 11/9/16 Case Announcements #2, 2016-Ohio-7681).

Indeed, the Ohio Supreme Court just ruled again that *Hurst* does not apply to Ohio's death penalty scheme. *State v. Mason*, 2018-Ohio-1462, -- N.E.3d --.

In *Mason*, the Ohio Supreme Court made clear that these determinations that Ohio's death-penalty statutes do not contravene *Hurst* were not dictum. In *State v. Mason*, 2018-Ohio-1462, -- N.E.3d --, the Ohio Supreme Court specifically held that Ohio's death-penalty scheme is not unconstitutional under *Hurst* nor does it violate the Sixth Amendment. *Id.*

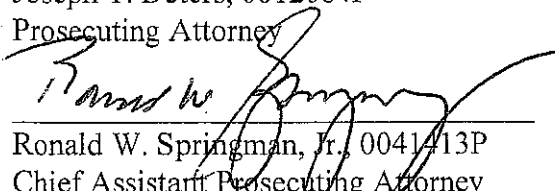
In short, an Ohio jury found Carter acted with prior calculation and design and committed a murder in the course of aggravated robbery – findings that rendered Carter death-eligible. Carter's case differs from *Hurst* because the record is clear that Carter's jury found beyond a reasonable doubt that he acted with prior calculation and design and committed or attempted to commit the felony of aggravated robbery – the requisite elements rendering him death-eligible.

CONCLUSION

Carter's petition for certiorari is properly denied.

Respectfully submitted,

Joseph T. Deters, 0012084P
Prosecuting Attorney



Ronald W. Springman, Jr., 0041413P
Chief Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202

Counsel for Respondent, State of Ohio